

Attorney Docket No.:       **DEX-0547**  
Inventors:                   **Macina et al.**  
Serial No.:                  **10/538,002**  
Filing Date:                **June 13, 2006**  
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**REMARKS**

Claims 1-18 are pending in the instant application. Claims 11-14 have been withdrawn from consideration and subsequently canceled without prejudice by Applicants herein. Claims 1-10 and 15-18 have been rejected. Claims 1, 7, 10, 15, 16, 17 and 18 have been amended. Support for this amendment is provided in the specification at pages 20-22. No new matter is added by this amendment. Reconsideration is respectfully requested in light of these amendments and the following remarks.

**I. Finality of Restriction Requirement**

The Examiner has made final the Restriction Requirement mailed October 4, 2007. Accordingly, in an earnest effort to advance the prosecution of this case, Applicants have canceled without prejudice nonelected claims 11-14. Further, Applicants have deleted from claims 15 and 16-18 non elected subject matter. Applicants reserve the right to file a divisional application to the canceled subject matter.

**II. Rejection of Claims 1-10 and 15-18 under 35 U.S.C. 112, second paragraph**

Claims 1-10 and 15-18 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly

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point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner suggests that claims 1 and 15-18 are vague and indefinite because they claim more than was elected. Further, the Examiner suggests that recitation of "selectively hybridizes to" in claims 1, 7, 15, 16 and 17 is vague, indefinite and incomplete. In addition, the Examiner suggests that claims 16, 17 and 18 are incomplete as depending upon canceled claim 12. Finally, the Examiner suggests that claims 7 and 10 are vague and indefinite because they are improper hybrid claims.

Accordingly, in an earnest effort to advance the prosecution of this case, claims 1 and 15-18 have been amended to be drawn to the elected subject matter.

Further claim 1 and claims 15 and 16 have been amended to delete part (c) drawn to a nucleic acid molecule that selectively hybridizes to the nucleic acid molecule of (a) or (b). Claim 7 has also been amended to recite a method wherein step (a) comprises contacting the sample with the nucleic acid molecule of claim 1 under stringent conditions in which the nucleic acid molecule will hybridize to a colon specific nucleic acid. Support for the amendment is provided at pages 20-22 wherein detailed methodologies for contacting a nucleic acid molecule under stringent conditions

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so that the nucleic acid molecule hybridizes to a colon specific nucleic acid are disclosed.

In addition, claims 16, 17 and 18 have been amended to depend on pending claim 1.

Finally, claims 7 and 10 have been amended to be independent claims.

Withdrawal of these rejections is therefore respectfully requested.

### **III. Rejection of Claims under 35 U.S.C. 102(b)**

Claims 1-6, 8, 9 and 10 have been rejected under 35 U.S.C. (b) as being anticipated by either Stormann et al. (U.S. Patent 6,077,675) or Drmanac et al. (WO 01/75067). The Examiner suggests that these references each disclose a nucleic acid that would hybridize to SEQ ID NO:9 of the instant claims in accordance with teachings of Kennell (Progr. Nucl. Acid Res. Mol. Biol. 1971 11:259).

Applicants respectfully traverse this rejection.

Specifically, Applicants respectfully disagree with the Examiner's interpretation of the teaching of Kennell et al. as they relate to either Stormann et al. (U.S. Patent 6,077,675) or Drmanac et al. (WO 01/75067). The Examiner states that Kennell et al. (in particular the paragraph bridging pages 260-261) teach

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that a hereroduplex of 25-50 base pairs approaches maximal stability, thus, the nucleic acids of Stormann et al. and Drmanac et al. are embraced by the claims. It is respectfully pointed out, however, that the full passage cited by the Examiner states:

"...the stability of a **complementary duplex** [emphasis added] of 25-50 nucleotides approaches that of any much longer complex. The thermal stability of a nucleic acid duplex is extremely sensitive to the presence of mismatched nucleotide pairs within the polymer strands. The reduced stabilities of many associated complexes from cells of higher organisms results from variable extents of mismatching within duplexes in the hybrid population."

Accordingly, teachings of Kennell et al. relate to stability of fully **complementary duplexes** and not to mismatched complexes.

As evident in the alignments provided by the Examiner in the Office Action mailed January 14, 2008, there are variable extents of mismatching (mismatches, insertions, and deletions) between SEQ ID NO:9 of the instant invention and the sequences of Stormann et al. and Drmanac et al. Thus, since SEQ ID NO:9 does not form a **complementary duplex** with either the sequence of Stormann et al. or Drmanac et al., and there are mismatches between the sequences, contrary to the Examiner's assertion, Kennell et al. actually teaches that there would be reduced stability between SEQ ID NO:9 and the sequence of Stormann et al.

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or Drmanac et al. Accordingly, a conclusion that the sequences of Stormann et al. and Drmanac et al. would selectively hybridize under stringent conditions to SEQ ID NO:9 is contrary to teachings of Kennell et al.

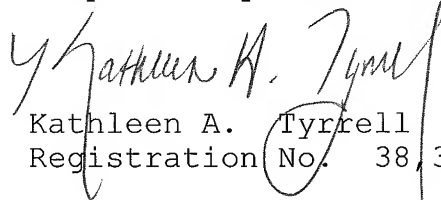
Further, as discussed in Section II, claim 1 has been amended to delete part (c) drawn to a nucleic acid molecule that selectively hybridizes to the nucleic acid molecule of (a) or (b), thus mooting these rejections.

Withdrawal of these rejections is therefore respectfully requested.

#### **IV. Conclusion**

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record. Accordingly, favorable reconsideration and subsequent allowance of the pending claims is earnestly solicited.

Respectfully submitted,

  
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